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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN WESLEY GUIDRY,

Defendant and Appellant.

F068997

(Super. Ct. Nos. CRL006094/  
CRL009483)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Merced County. Harry L. Jacobs, Judge.

R. Randall Riccardo, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Gomes, Acting P.J., Kane, J. and Franson, J.

Defendant Kevin Wesley Guidry was granted probation in two cases. In case No. CRL006094, the trial court imposed a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b))<sup>1</sup> and a \$200 stayed probation revocation fine (§ 1202.44). In case No. CRL009483, the court imposed a \$280 restitution fine (§ 1202.4, subd. (b)) and a \$280 stayed probation revocation fine (§ 1202.44). Later, when defendant's probation was revoked, the trial court sentenced defendant to two years eight months in prison for both cases and increased his restitution and probation revocation fines from \$200 to \$280 and from \$280 to \$600 in the respective cases. On appeal, defendant contends the trial court lacked the authority to increase his fines upon revocation of his probation. The People concede and we agree.

A restitution fine imposed at the time of conviction and granting of probation remains the same despite a future revocation of probation. Therefore, when probation is revoked, the trial court has no authority to impose a second restitution fine in a greater amount than the original fine. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 820-823 [“a restitution fine imposed at the time probation is granted survives the revocation of probation”; the trial court is “without statutory authority” to impose a second, different restitution fine when probation is revoked]; *People v. Perez* (2011) 195 Cal.App.4th 801, 805.) Similarly, because a probation revocation fine must be imposed in the same amount as the restitution fine, the court also lacks the authorization to increase the probation revocation fine. (§ 1202.44; *Perez, supra*, at p. 805.)

Accordingly, we will strike the increased restitution fines and probation revocation fines imposed when probation was revoked and reinstate the original fines.

### **DISPOSITION**

The \$280 restitution fine and the \$280 probation revocation fine imposed in case No. CLR006094, and the \$600 restitution fine and \$600 probation revocation fine

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<sup>1</sup> All statutory references are to the Penal Code.

imposed in case No. CLR009483 are stricken. In their place, the originally imposed \$200 fines in case No. CLR006094 and \$280 fines in case No. CLR009483 are reinstated. The trial court is instructed to modify the abstract of judgment and minute order to reflect these originally imposed restitution and probation revocation fine amounts and to forward a certified copy of these documents to the appropriate entities. The judgment is affirmed in all other respects.